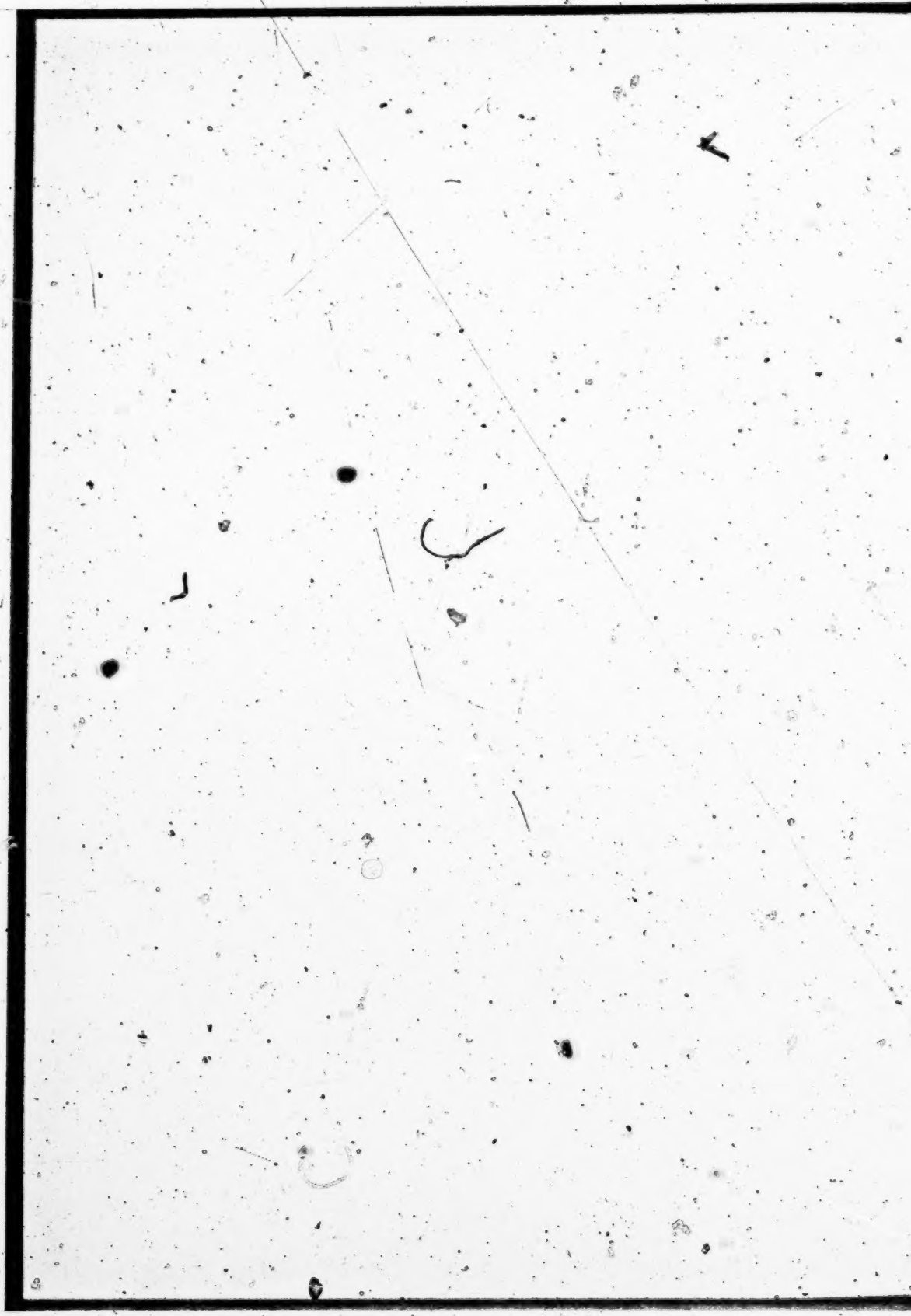


SUPREME COURT, U. S.

No. 1255

Office-Supreme Court, U.S.
FILED
MAY 23 1968
JOHN F. DAVIS, CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1967

REUBEN L. JONES,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

**Appeal from the Supreme Court of Louisiana**

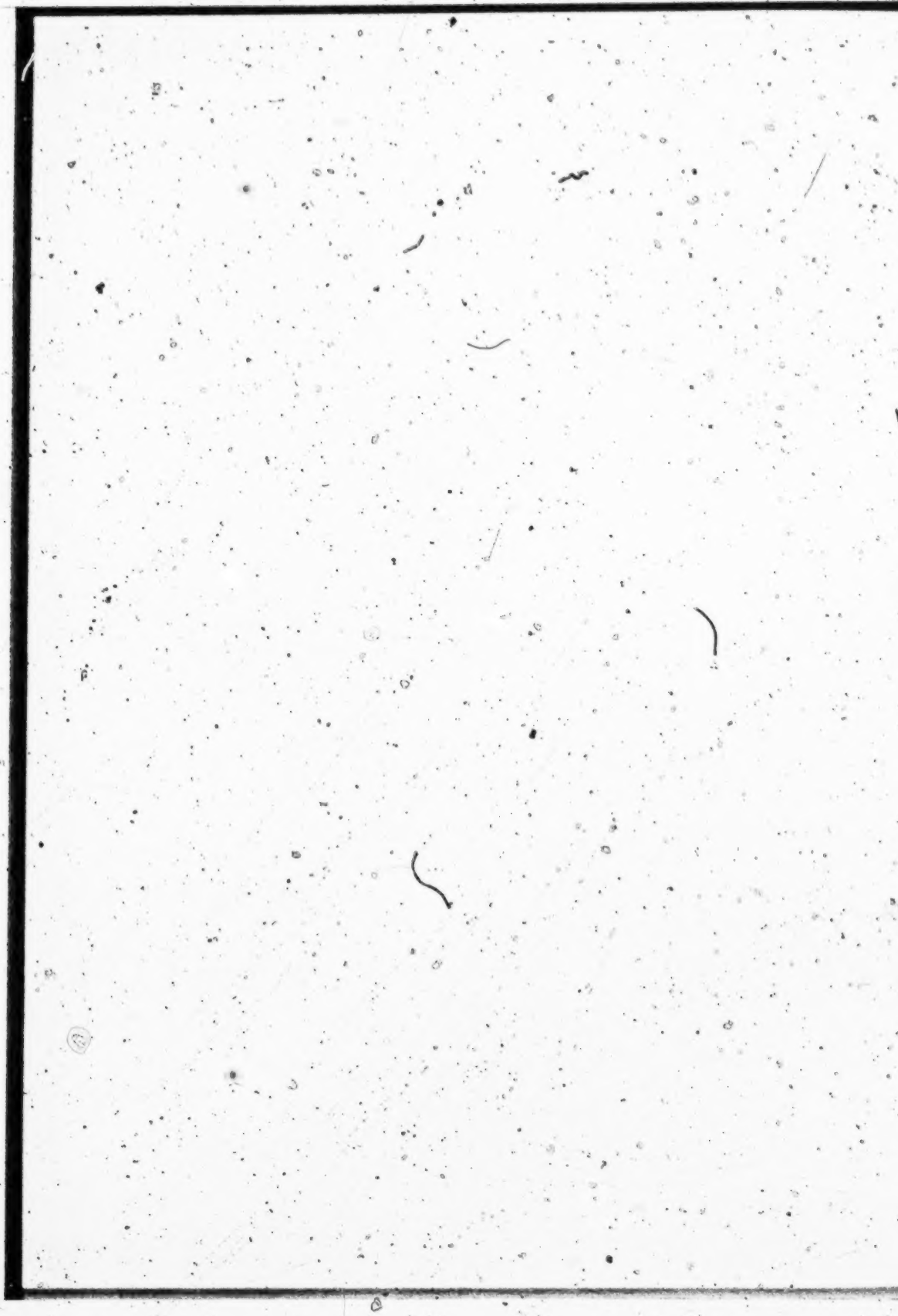
## MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

WILLIAM P. SCHULER,
Second Assistant Attorney General.

JOHN A. RICHARDSON,
District Attorney,
First Judicial District.

ALBERT S. LUTZ,
First Assistant District Attorney,
First Judicial District.



No._____

# In the Supreme Court of the United States

OCTOBER TERM, 1967

---

REUBEN L. JONES,

Appellant,

v.

STATE OF LOUISIANA,

Appellee.

---

**Appeal from the Supreme Court of Louisiana**

---

## MOTION TO DISMISS AND IN THE ALTERNATIVE TO AFFIRM

---

Appellee pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States moves that this appeal be dismissed, on the ground that the appeal is not within the jurisdiction of this Court and does not present a substantial federal question and that the judgment rests on an adequate non-federal basis, and that the question sought to be reviewed was not timely or properly raised or passed on by the court below, and in the alternative moves that the final judgment and decree of the Supreme Court of Louisiana be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

## I. OPINION BELOW

The opinion of the Louisiana Supreme Court is reported in *State of Louisiana v. Reuben L. Jones*, 251 La. 431, 204 So.2d 775, and is reproduced in the appendix following page 11 of appellant's jurisdictional statement.

## II. JURISDICTION

Jurisdiction is invoked under 28 U.S.C. 1257 (2).

However, the appeal to the Louisiana Supreme Court from the conviction under Louisiana Revised Statutes 14:284 was a nullity and was dismissed by the Louisiana Supreme Court for lack of jurisdiction. Consequently, the appeal to the United States Supreme Court from the judgment of the trial court was not timely filed because it did not comply with Rule 11 of the Revised Rules of the Supreme Court and should be dismissed.

In the alternative, the Louisiana Supreme Court's dismissal of appellant's appeal from his conviction under Revised Statutes 14:284 rests on an adequate non-federal basis, namely, the lack of jurisdiction of the Louisiana Supreme Court over the appeal under the provisions of Article VII, Section 10 of the Louisiana Constitution.

In the further alternative, the appeal from the conviction under Revised Statutes 14:284 does not present a substantial federal question inasmuch as the maximum imprisonment which can be imposed under Revised Statutes 14:284 is six months in the parish jail. Even if the Sixth Amendment jury trial provi-

sion were applicable to state prosecutions through the Fourteenth Amendment, a prosecution under Revised Statutes 14:284 would be exempt from the jury requirement because the maximum period of imprisonment does not exceed six months. Cf. 18 U.S.C. Sec. 1; *Cheff v. Schnackenberg*, 384 U.S. 373.

The appeal from the convictions under Louisiana Revised Statutes 14:95(3) does not present a substantial federal question because this Court has consistently reiterated the view that the Due Process Clause of the Fourteenth Amendment does not incorporate the jury trial provision of the Sixth Amendment. *Maxwell v. Dow*, 176 U. S. 581, *Snyder v. Massachusetts*, 291 U.S. 97; *Palko v. Connecticut*, 302 U.S. 319.

Appellant's argument that he was prejudiced by denial of his right to trial by jury because of the comments made by the trial judge in denying the motion for a directed verdict, was raised for the first time in the state supreme court and was not considered by that court, as the motion for a directed verdict was not founded on that ground, and defendant made no objection and reserved no bill of exceptions to the alleged improper remarks of the judge at the time they were made. Therefore, under Rule 16 (b) of the Revised Rules of this Court, the question of the effect of the alleged impropriety of the trial judge's remarks is not properly before this Court because of appellant's failure to raise the issue in state court at the proper time and because the state supreme court did not pass upon the question.

Jurisdiction should therefore be declined.

## III. QUESTION PRESENTED

Is the right to the twelve-man unanimous jury trial which is required by the Sixth Amendment so fundamental and essential to a fair trial that it is guaranteed by the Fourteenth Amendment in state misdemeanor prosecutions?

## IV. STATEMENT

Appellant was charged in bills of information with two separate violations of Louisiana Revised Statutes 14:95(3) for possession of burglary tools, and also for violating Revised Statutes 14:284, the peeping tom statute, all of which are misdemeanors under Louisiana law.

He was tried by a judge without a jury, found guilty in all three cases, and sentenced to serve one year in the parish prison on each charge for possession of burglar tools, and six months for violation of R.S. 14:284, all sentences to run concurrently. From these convictions and sentences appellant prosecuted a single appeal to the Louisiana Supreme Court.

The Louisiana Supreme Court dismissed the appeal from the conviction under Revised Statutes 14:-284 on the ground that it lacked jurisdiction of an appeal from that conviction. The dismissal was based on Section 10, Article VII of the Louisiana Constitution which denies the Louisiana Supreme Court jurisdiction over appeals in misdemeanor cases wherein the penalty actually imposed does not exceed six months

imprisonment or a three hundred ($300.00) dollar fine.

The Louisiana Supreme Court affirmed the convictions and sentences under Revised Statutes 14:-95(3), rejecting appellant's contention that he was entitled to a jury trial of those misdemeanors under the Sixth and Fourteenth Amendments to the Constitution of the United States. The court held that a trial by jury is not a prerequisite to due process or an essential to a fair trial in a state court for any misdemeanor case.

## V. ARGUMENT

The decision of the Louisiana Supreme Court, which holds that the Sixth Amendment jury trial right is not a prerequisite to due process and not essential to a fair trial of a state misdemeanor charge, is plainly correct.

As the Louisiana Supreme Court points out, the Sixth Amendment right of trial by jury does not extend to every criminal proceeding, and a jury is not demandable in federal trials for petty offenses. *Callan v. Wilson*, 127 U.S. 540; *D.C. v. Clawans*, 300 U.S. 617; *Cheff v. Schnackenberg*, 384 U.S. 373.

Yet it cannot be denied that under the due process clause of the Fifth Amendment, all federal defendants, even those being tried for petty offenses, are entitled to fairness and due process. *Cf. Tumey v. Ohio*, 273 U.S. 510; *Natal v. Louisiana*, 139 U.S. 621.

If the right to demand a jury were essential to a

fair trial and due process, not even the most petty offenders could be tried without a jury in federal court.

Therefore, it must be concluded that the right to jury trial in federal court exists only by virtue of Article 3 and the Sixth Amendment to the Constitution and not because a jury is essential to a fair trial.

The Sixth Amendment rights which have been applied to the states through the due process clause of the Fourteenth Amendment were so applied, not because they are found in the Sixth Amendment, but because they are essential to a fair trial, and a fair trial is required by the due process clause of the Fourteenth Amendment.[1]

As pointed out by the Louisiana Supreme Court, the test under due process, applicable to the case at bar, is whether the Sixth Amendment jury trial right is essential to a fair trial of a state misdemeanor charge.

As further pointed out by the Louisiana Supreme Court, evenhandedness and impartiality in the fact finding process are required for a fair trial. But the court correctly rejected as illogical the notion that a group of twelve laymen,[2] as compared to any other number of laymen, or as compared to a trained judge,

---

[1]For authorities in support of this proposition and a fuller discussion thereof, the Court is respectfully referred to page 36 et seq. of the brief of the State of Louisiana in *Duncan v. State of Louisiana*, No. 410 of the Court's Docket, October Term, 1967.

[2]The Court's attention is respectfully called to *Patton v. the U.S.*, 281 U.S. 276, and the consequences of requiring all the states to try crimes by twelve-man unanimous juries.

or a panel of experts, is the only fair and impartial means for exercising the fact-finding function.

Unlike the due process clause of the Fourteenth Amendment, the Sixth Amendment jury trial right is not an abstract declaration of the rights of man, but deals only with the preservation of a concrete institution: the eighteenth century twelve-man unanimous jury. It cannot be logically argued that such a rigid institution, in which procedural reform is impossible, represents a right so fundamental that a fair trial is impossible without it.

It is respectfully submitted that decisions of this Court have established the principle that neither tradition nor logic requires jury trial as an essential of fairness and due process in a state misdemeanor prosecution. *Maxwell v. Dow*, 176 U.S. 581, followed the rationale of *Hurtado v. California*, 110 U.S. 516, and applied the test of fundamental fairness to determine that due process did not require a jury trial in a state prosecution. This Court has consistently reiterated that view. See, *Snyder v. Massachusetts*, 291 U.S. 97; *Palko v. Connecticut*, 302 U.S. 319; *Irvin v. Dowd*, 366 U.S. 717.

The history[3] of jury trial reflects the general

---

For a discussion of the results that would flow from such a holding, reference is made to the brief of the State of Louisiana, beginning on page 73, in *Duncan v. Louisiana*, No. 410 of the Docket of this Court, October Term, 1967.

[3]For authorities supporting the view that historically jury trial was not treated as an essential element of a fair

right of jury trial existing side by side with the power of the legislative branch to diminish that right by positive law providing for bench trial of specific offenses. The reason for dispensing with jury trials in certain cases at common law was essentially "the desire for a swift and convenient remedy" rather than any unifying principle as to the type of offense tried summarily. Frankfurter and Corcoran, "Petty Federal Offenses and the Constitutional Guarantee of Trial by Jury," 39 Harvard L. Rev. 917, 927. The "desire for a swift and convenient remedy" continues to be applicable today and is beneficial to defendants and the state alike. Misdemeanors must be tried and disposed of quickly in order to protect defendants from having criminal charges pending against them for a period of time longer than the period of imprisonment if found guilty. From the beginning the states have constantly attempted to adjust the machinery and scope of jury trial with the volume of litigation in the interest of speed and efficiency.

From the states' point of view, the volume of cases handled by state courts is significantly larger than that handled by federal courts, state jury trial calendars are already congested, and the strain on the states' judicial systems of convening a common law jury for every misdemeanor should be obvious.[4]

---

trial, the Court is respectfully referred to page 81 et seq. of the brief of the State of Louisiana in *Duncan v. Louisiana*, No. 410 of the Docket of this Court, October Term, 1967.

[4]The Court is respectfully referred to Appendix B and Appendix D of the brief of the State of Louisiana in *Duncan*

It is further submitted that the common law jury was imposed on the federal government because of the states' fear of a despotic central government. See the Federalist No. 83, (Hamilton). The inclusion in the Constitution of a right to trial by jury as a limitation on a feared despotic central government provides insufficient justification for imposing on fifty different states with diverse problems the rigid federal jury system with its essentially arbitrary technical incidents which were fashioned by federal legislation and court decisions for the federal courts alone and can hardly be said to be constitutionally mandated.

In view of the foregoing, it is respectfully submitted that the appellant presents no substantial question for the decision of this Court and that the appeal should be dismissed, and in the alternative the judgment and decree of the Louisiana Supreme Court should be affirmed.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.
WILLIAM P. SCHULER,
Second Assistant Attorney General.
JOHN A. RICHARDSON,
District Attorney,
First Judicial District.
ALBERT S. LUTZ, JR.
First Assistant District Attorney,
First Judicial District.

---

*v. State of Louisiana*, No. 410 of this Court's docket, October Term, 1967.

## CERTIFICATE OF SERVICE

I, William P. Schuler, a member of the Bar of the Supreme Court of the United States, certify that a copy of the above and foregoing motion has been served on counsel for appellant by depositing same in the United States Mail, postage prepaid, addressed to Wellborn Jack, Jr., 1625 Slattery Building, Shreveport, Louisiana 71101.

New Orleans, Louisiana, this ..... day of May, 1968.

WILLIAM P. SCHULER

B-1386, 5-68